vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2041 OF 1998

Sangli Zilha Shikshan Vikas
Mandal & Anr. ... Petitioners

V/s.

Shri Shankar Baburao Mali & Anr. ... Respondents

Mr.S.J. Rairkar for Petitioners
Mr.A.H. Palekar for Respondent No.1
Mr.R.M. Patne, AGP, for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 20, 2007**

ORAL JUDGMENT:

. The petition challenges the order of the School Tribunal dated 9.12.1997 in Appeal No.232 of 1996. By this order, the Tribunal has held that the action of the petitioners declaring that Respondent No.1 had been discontinued from service is illegal. Respondents i.e., the Petitioners herein, were directed to continue the Respondent No.1-teacher in service from 1993 onwards. The Tribunal issued a further direction that Respondent No.1 should be subjected to a medical examination for the hearing deficiency which the management claimed he suffered from.

2. The facts in brief are as follows:

On 20.8.1993, the petitioners informed Respondent No.1

who was employed with them from 10.6.1990 that the complaints had been received from pupils of the school and their parents that Respondent No.1 was hard of hearing and therefore, was easily irritated when his queries were not answered by the pupils. The petitioners called upon the Respondent teacher to get himself examined for this impairment. On 2.9.1993, a letter was sent to the respondent calling upon him to get himself medically examined in order t obviate unpleasantness in his classroom. According to the petitioners, he refused to accept this letter and it was sent to the respondent again. Respondent No.1 approached the Education Officer contending that he had not been permitted to sign the muster roll by the management. The Education Officer directed the Petitioners to file a reply. The petitioners pointed out that Respondent No.1 had been absent w.e.f. 6.9.1993 and that he was not prevented from signing the muster roll as alleged by him. On 17.9.1995 a letter was issued to the petitioners directing them to allow the respondent to resume work. The petitioners informed the Education Officer that Respondent No.1 was hard of hearing and that he had been requested to get himself medically examined. On this communication being received from the petitioners, the Education Officer directed the respondent to produce the requisite medical certificate to enable the petitioners to permit him to

resume duty. On 6.6.1996, Respondent No.1 was directed to undergo a medical examination by the Civil Surgeon, Sangli by the Education Officer. The petitioners also issued a letter to Respondent No.1 directing him to get himself examined by the Civil Surgeon, Sangli and to obtain the requisite medical certificate. By another letter dated 23.9.1996, the petitioners informed Respondent No.1 that his services had been deemed to be terminated as he had voluntarily abandoned duty for a continuous period of three years.

3. An appeal was preferred by Respondent No.1 to the School Tribunal on 19.11.1996. An application for condoning the delay in filing the appeal was also filed. The appeal was contested by the petitioners herein, contending that the School Tribunal had no jurisdiction to decide the appeal as it was barred by limitation. The petitioner pleaded that Respondent No.1 had abandoned his service with them from 1993 onwards and, therefore, the appeal itself was barred by limitation. The cause of action according to the petitioners arose in 1993 when they had allegedly prevented the respondent from signing the muster roll. It was further contended that Respondent No.1 abandoned the job because he was directed to get himself examined medically for his hearing impairment. The School Tribunal by way of ad-interim relief directed the petitioners to continue

Respondent No.1 in service and to pay his past salary. On 9.12.1996, the Division Bench of this Court dismissed Writ Petition No.5987 of 1996 filed by the Petitioner challenging the interim order passed by the School Tribunal. The petitioners then appeared before the School Tribunal and filed a reply to the appeal as well as the interim relief application.

4. Mr.Rairkar, learned advocate appearing for the petitioner, contends that the School Tribunal had no jurisdiction to entertain the appeal since it was barred by limitation. He submits that the cause of action had arisen in September 1993 when according to Respondent No.1 the petitioners had prevented him from signing the muster roll. He points out that Respondent No.1 ought to have approached the School Tribunal at that stage itself. However, it was only after the letter of 23.9.1996 was issued informing him that he was deemed to have abandoned service that Respondent No.1 chose to file the appeal on 19.10.1996. It is submitted that the School Tribunal has not considered the aspect of delay at all and therefore the order passed by the Tribunal is without jurisdiction. Apart from this, it is submitted that on merits also Respondent No.1 has no case at all since he had not subjected himself to the medical examination as directed by the petitioners and by the Education Officer. In such a situation according to the

learned Advocate, the petitioners had no option but to treat him as having abandoned his service as he remained absent for three years.

5. The learned Advocate Mr.Palekar appearing for the Respondent No.1 brings to my notice the order passed by this Court at the stage when the petition was admitted. Interim relief was granted, subject to payment of backwages from 6.9.1993 onwards within a stipulated period. This order also stipulates that in the event the petitioners failed to comply with the conditions in the order the ad-interim stay granted would be automatically vacated without further reference to Court. According to the learned Advocate, since the petitioners had not paid backwages or deposited the same in Court the petition itself must fail. He submits that when the order has been passed by this Court directing the petitioners to pay backwages it is incumbent on the petitioners to pay the same. They cannot get away by submitting that at best the interim relief granted would be vacated. He submits that the conduct of the petitioners is highly condemnable. He urges that no relief should be granted by the writ court under its equitable jurisdiction to a party which does not comply with the orders of the Court. He then submits that although the petitioner had been prevented from signing the muster roll in 1993, it was only when he received the letter on 23.9.1996 that he realised that he no

longer continued in service and that was when the cause of action arose, according to the learned advocate.

6. Before considering the case on merits it would be necessary to consider whether the submission of the learned advocate for the petitioners that the appeal itself was barred by limitation is correct. The appeal has been filed mainly against the order of 23.9.1996 declaring that Respondent No.1 had abandoned his service and was, therefore, no longer on the rolls of the petitioners. This action has been taken by the petitioners as a consequence of the provisions of law which permit them to treat an employee who has remained absent from duty for more than three years as having abandoned his service. In my opinion, there is no delay and, therefore, the Tribunal has not committed any error deciding the appeal. The cause of action has arisen in 1996 when the letter treating Respondent No.1 as having abandoned the service was issued to him. The other reliefs sought including directions that he be permitted to sign the muster rolls from September 1993 onwards are not the substantial reliefs but consequential reliefs. The relief of reinstatement is what the Tribunal could have granted only if it set aside the order declaring that Respondent No.1 had abandoned the service. In such circumstances, in my view, there is no delay and the appeal has therefore rightly been decided by the

Tribunal.

7. The submission of Mr.Palekar that the petition should be dismissed as the petitioners have not complied with the orders of this Court cannot be accepted. This is because the order passed at the stage when the interim relief was granted directs that the consequences of non-payment of backwages would be vacation of the stay. Therefore, merely because the backwages have not been paid, in my opinion, would not lead to the result of the petition having to be dismissed on that count alone.

8. The merits of the controversy revolves around the issue as to whether the petitioners were right in treating the Respondent No.1 as having abandoned his service. In my view, the School Tribunal has committed no error in deciding in favour of Respondent No.1. He was informed by a letter of 20.8.1993 about the complaints received from the pupils and their parents about the alleged hearing impairment of Respondent No.1. Several letters were issued by the management to him calling upon him to get himself medically examined. The Education Officer also directed him to subject himself to a medical examination by an ENT specialist. In such

circumstances, it cannot be said that the respondent had abandoned his service. The petitioners had prevented Respondent No.1 from signing the muster roll on 6.9.1993 and the Respondent No.1 had approached Respondent No.2 for redressal of his grievance. Consequently the Petitioners were directed to allow the Respondent No.1 to sign the muster roll. In my view, the fact that the petitioners continued him in service and called upon him to subject himself to a medical examination would indicate that the petitioners did not treat the services of Respondent No.1 as terminated on and from 6.9.1996. Thus, there is neither any delay in the matter in filing the appeal nor is there any reason to interfere with the order of the Tribunal on merits. The letter of 23.9.1996 is illegally issued to Respondent No.1 The petitioners communicated and corresponded with Respondent No.1 throughout the period from 1993 to 1996 calling him to report to the medical officer. In my opinion, therefore, the Tribunal has committed no error in concluding that there was no abandonment of service by the Respondent No.1. The conduct of Respondent No.1 does not disclose any intention to abandon his services.

9. Apart from this, it is common ground that Respondent No.1 has been continuing in service ever since the ad-interim order was passed by the School Tribunal on 19.11.1996, albeit due to orders of various

Courts. Respondent No.1 has been examined by an ENT specialist who has certified that his hearing impairment can be overcome with a hearing aid. Respondent No.1 has been using a hearing aid and is today teaching in the school. There are no complaints at all with respect to his teaching at this stage. In view of this fact, in my opinion, there is no need to interfere with the order of the School Tribunal. Petition dismissed. Rule discharged. No order as to costs.